Supreme Court, U.S.
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CLERK

No. 95-1397

IN THE

Supreme Court of the United States

October Term, 1995

JAMES ANDREWS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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33 pp

QUESTION PRESENTED

Does the evidentiary standard of the family violence act, State of Georgia, meet the minimum standards of proof mandated by due process?

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF CASE	3
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	13

INDEX TO APPENDICES

APPENDIX A	Opinion of Superior Court of Baldwin County as reported in Marlene D. Andrews vs. James L. Andrews total case submitted.
APPENDIX B	Opinion of Appeals of the State of Georgia
APPENDIX C	Opinion of United States District Court Macon Division
APPENDIX D	Opinion of the United States Court of Appeals for Eleventh Circuit
APPENDIX E	Court of Appeals Denial of Petition for Rehearing, October 23,1995.
APPENDIX F	Amendment XIV to United States Constitution

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93 S.Ct. 99, 34 Constitutional Law 5

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80 S.Ct. 624,362 U. 5. 199 Constitutional Law 5,6

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632 F 2d 605 (5th Cir 1980) Constitutional Law 5

Constitutional Law 255 6

Walker v. State 220 Georgia
85 S.Ct. 1557 Constitutional Law 6

Patterson v. Bedford
Breedlove & Robeson 28 U.S. 433,
3 PET 433 Constitutional Law 7

Carlisle v. U.S.
83 U.S. 147, 16 Wall (U.S. Ct. C.I. 1872)
Constitutional Law 7

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42 S.Ct. 124, 257 U.S. 312 Constitutional Law 8

Constitutional Law 101 11

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Cite as 102 S.Ct. 1388 (1982) 455 U.S. 765 Minimum standards of proof, is question of Federal Law for S.C. Amends 14.. ..... 2, 9, ... 10

Pine Grove Tp v. Talcott
86 U.S. 666, 19 Wall 666 22 L ED 227 7

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56 S.Ct. 855 298 U.S. 238 9

Family Violence Act

No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term of 1995

James Andrews, Petitioner

vs.

State of Georgia, Zell Miller, Governor
Michael Bowers, Attorney General, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner James Andrews respectfully prays that a writ of certiorari issue to review the unconstitutionality and minimum evidentiary standard of a State Law. All proceedings in the United States Court of Appeals for the Eleventh circuit have been barred by the State using the 11th amendment.

OPINIONS BELOW

Opinion of Superior Court of Baldwin County, State of Georgia 14th day of September 1994 and appears in Appendix A of this Petition. A Court of Appeals of the State of Georgia opinion was issued September 26, 1994, and appears in Appendix B of this petition. The United States District Court opinion was filed November 22, 1994, and appears in Appendix C of this petition. The Court of Appeals opinion in this matter was filed on August 8, 1995, and appears in Appendix D of this petition. The Court of Appeals denial of the petition for rehearing was issued October 23, 1995, and appears in Appendix E of this Petition.

JURISDICTION

Suit is barred under the eleventh amendment. State would not waive its eleventh amendment immunity. This Courts jurisdiction is invoked under the Supreme Court Case *Sandosky V. Kramer* cite as 102 S, Ct. 1388 C19821, 455 U.S. 745

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix F.

STATEMENTS OF THE CASE

On September 14, 1994, in the Civil Action No. 94CV31279B, Marlene Denise Andrews, ex-wife Plaintiff V. James Andrews, Defendant in the Superior Court of Baldwin County State of Georgia, filed a petition pursuant to the Georgia Family Violence Act. Ga. Code S 19-31-1 *et seq* requesting a temporary Protective Order barring Andrews from harassing her and minor son.

One of the allegations made was that Andrews was a Manic Depressant and thus dangerous. A Order of the Court was based on a statement made under oath. The Plaintiff had legal representation. Georgia Superior Court entered an *ex parte* restraining Order against Andrews. Review of the records of the case showed no evidence was brought before the Judge, e.g., police, medical records or witnesses. The Order of the Court was granted stating the Defendant had not been given notice of the proceedings and specific facts had been charged. The Court scheduled a hearing date for the case on Friday, September 23.

On September 22, 1994, Andrews filed a Civil Action in the Court of Appeals, State of Georgia showing that the Action of the Court violated constitutional rights to Due Process and equality protection under the Law, 14th

amendment and the understanding of Due Process, constitutional Law 255.

On Friday the 23rd, Andrews was at the Superior Court to be heard. The Case was on the docket and the Judge named the case to be heard during the day. My legal counsel was not present. The case had been postponed.

The Georgia Court of appeals passed an Order that the complaint against the Order of the Superior Court was dismissed. The appeal was moot because of the hearing set on Friday the 23rd. Georgia Law stipulated that the Superior Court Case must be heard within 30 days. The case was not docketed or heard.

REASON FOR GRANTING THE WRIT

The 14th Amendment is the Supreme Law of the land that guarantees that the State will treat individuals with "fundamental fairness" whenever its actions infringe their protected liberty or property interests 455 U.S. page 770. The State of Georgia, Office of the Attorney General has blocked the assertion of 14th Amendment rights using the 11th amendment in the Federal Court of appeals. The constitutional questions could not be address by the lower Courts.

Civil Action No. 94CV31279B, Marlene Denise Andrews, Plaintiff VS. James L. Andrews, Defendant in the Superior Court of Baldwin County, State of Georgia, The

Plaintiff petitioned for temporary and permanent custody Protective Order pursuant to the O.C.G.A. & 19-13, Family Violence Act. A Court Order based upon a verified petition was granted. The verified petition is a statement under oath that facts stated are true. Further, the Court noted in the Order that the Defendant had not been given notice and specific facts had been charged against him. Review of the entire proceedings shows determination to be totally void of evidentiary support. The Court set a hearing date to show cause before the presiding Judge nine days after issuing Order of the Court.

(a) The Constitution requires

the State with burden of proof and accused with presumption of innocence. It is a violation of Due Process to convict and punish a man without evidence of his guilt.

The State made a determination based on an unsubstantiated allegation of "harassment toward Petitioner" and "a long history of mental illness, namely manic depression."

(b) State characterization of its laws not to functionally operate to not place burden of persuasion on Defendant.

Functionally, the State placed the Burden of persuasion of the essential element(s) on the Defendant.

> (c) Due Process would require that the Defendant be present with council, have an opportunity to be heard, be confronted with witness against him and have the rights to cross examination and offer evidence on his own before being sentence (adjudged in lower Court).

The Court noted that the Defendant had not been given notice and specific facts had been charged and sustained by the Court. My Constitutional right to Due Process was violated.

> (d) Whether convictions were unconstitutional under Due Process clause of Fourteenth Amendment depended upon whether convictions rested upon any evidence at all rather than upon sufficiency of evidence.

The issuance of a Court Order was based on statements made under oath (verification). This was sufficienct for the judge but without evidence and thus unconstitutional.

> (e) For something to constitute denial of equal protection and Due Process State must be involved.

The State Action took place in the Superior Court of Baldwin County while acting on a State Law.

> (f) A Court should not give to an act a construction which would involve a violation, however unintentional of the Constitution unless the terms of the Act render such construction unavoidable.

Review of the Act finds the Court followed the terms of the Act. The terms of the Act forced a violation of the Constitution. The papers of the Court are submitted as evidence.

> (g) Where a Statute is claimed to be unconstitutional the particular clause of the Constitution which it is claimed to conflict must be specified and the Statue must admit of no reasonable construction in harmony with its meaning.

The violation of the Constitutional rights is based on the United States Constitutional Amendment Fourteen.

> (h) All general terms in Statue should be limited in the application so as not lead to injustice, oppression or any unconstitutional operation if such is possible.

Review of the Family Violence, State of Georgia Section 19-13-3, finds the use of a verified petition, in which

the Petitioner alleges with specific fact under oath abridges the privileges and immunities of the citizens of the State of Georgia. By denying Due Process of the Law and equal protection of the Law.

The verified petition can be used as stated in Family Violence Act 19-13-4 to deprive a person of property and liberty.

> (i) The purpose of the Constitution was to protect the fundamental right of the individual against experiments by the government.

Section 19-13-30 of the Family Violence Act expresses intent of Georgia Assemble to address the problem of Family Violence by issuance of temporary Protective Orders and use of Courts, prosecutors, Law enforcement agencies, the correctional system, public assistance and other services.

Section 19-13-31 establishes a State Commission of Family Violence which shall be responsible for developing a comprehensive State Plan for ending Family Violence. This plan shall include the initiation, coordination, and oversight of the implementation of Family Violence laws.

The Action of the General Assembly of Georgia has resulted in a State Law which violate Federal Constitution.

(j) Beneficent aims however great or well directed can never serve in lieu of Constitutional power.

The State of Georgia has allowed beneficial aims to serve in lieu of constitutional power. Family Violence Act submitted as evidence.

(k) The Supreme Court Case *Santosky V. Kramer* cite as 102 S, Ct. 1388, (1982), 455 U.S. 745 shows standards for Due Process with State codes. In element six, Federal Courts key 416:

> Minimum standards of proof mandated by Due Process is question of Federal Law which Supreme Court may resolve U.S.C.A. Const. Amends. 5, 14.

The Family Violence Act/Liberty Between Parent and Child

The Georgia Family Violence Act requires no evidentiary support of the verified petition. The Act is designed to protect individuals within a given family system against abuse and is frequently used in a divorce proceeding when there are questions of Protective custody and allegations of spouse abuse. When one parent makes an allegation of abuse against the other it is frequently made

within a context of an internecine relationship and serves the purpose of the individual rather than describing the actual behavior or states of mind of the other parent. The Court may then be in jeopardy of interfering with the liberty between the parent and child. A Protective Order is granted against the Defendant because the assumption is that the Defendant is potentially or in actuality harmful toward the child and Plaintiff. The Plaintiff and the representative attorney have had the advantage of an Action requiring no evidentiary support, Due Process, or equality as delineated in the 14th amendment.

The above Action does not meet the guidelines as mandated in *Santosky v. Kramer.*

The opinion of the Court is as follows:

> The Court has mandated an intermediate standard of proof-"clear and convincing evidence"-when the individual interest at stake in a State proceeding are both "particularly important" and "more substantial that mere loss of money." Addington V. Texas, 441 U.S., at 424. Notwithstanding "the State's Civil labels and good intentions," id, at 427, quoting In re Winship, 397 U.S., at 365-366, the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with "significant deprivation of liberty" or "stigma." 441 U.S., at 425, 426.

The charge of Manic Depression, (that is, mental illness which is potentially dangerous to others) is a diagnosis that can ethically be made only by licensed medical professionals. A "stigma" both publicly and privately is attached to this diagnosis. But more importantly, this stigma is used in interfering with the liberty between the parent and child. If the Court does not demand a standard of proof higher than that of the Family Violence Act then an individual is not only in jeopardy of being stigmatized publicly through loss of credibility and professionalism but that individual may lose parental rights in relationship to his/her child. For these reasons, the Court should demand a standard of proof higher than that allowed for in the Act. At the very least, the Court should require the opinion of a mental health professional before making a judgment and initiating action, especially action that may be irreversible. In the case of Andrews v. Andrews an Order of the Court was issued based on an allegation of mental illness that was not substantiated or supported or initiated by a mental health professional. Here is the Constitutional guide from the U.S. Supreme Court showing cause for using a higher standard or proof.

Constitutional Law 251.5

> Retrospective case by case review cannot preserve fundamental fairness when class of proceedings is governed by constitutionally

defective evidentiary standard. U.S.C.A. Const. Amends. 5,14.

When the State accepts allegations and acts on them, the State alleges the Defendant at fault. For a State Court to reverse its own decision places the Defendant in competition with the States. See *Santosky V. Kramer.* The State did not take into account that the only family member Andrews has in the United States is his son. Unjust interference with this relationship creates a significant and painful loss.

The State marshals an array of public resources to prove its case and disprove the parents case 455 U.S. Page 760. An appropriate ending is found in a constitutional Law 101, practice discouraging assertion of rights.

If the only objective of a State practice is to discourage the assertion of constitutional rights, it is patently unconstitutional.

CONCLUSION

I stand before you after entering many Courts. For all my efforts, I have not been allowed to have even one day in Court. This is the last Court. In efforts to obtain fundamental fairness using the 14th amendment, to the best of ability, the eleventh amendment has been used to strike all down. I beg this Court to rule in my favour so no other parent has to face the loss of liberty or risk of stigma by a State that alleges the Defendant at fault. The most important hope is that no son or daughter has to stand by and watch their parent unjustly stripped of parental dignity.

DATED: January 18, 1996.

Respectfully submitted,

James L Andrews Pro se

JAMES L. ANDREWS,
PRO SE

IN THE SUPERIOR COURT OF BALDWIN COUNTY
STATE OF GEORGIA

MARLENE DENISE ANDREWS,	:	
Plaintiff	:	Civil Action
	:	No. 94CV31279B
	:	
JAMES L. ANDREWS	:	
Defendant;	:	

PETITION FOR TEMPORARY PROTECTIVE ORDER

COMES NOW, Marlene Denise Andrews, the Petitioner in the above-stated matter, and pursuant to the O.C.G.A. §19-13, Family Violence Act files this petition for a Temporary and Permanent Order and shows the Court the following:

I.

The Petitioner, Marlene Denise Andrews, is at least eighteen years of age and is a resident of Bibb County, Georgia.

2.

The Respondent, James L Andrews, is a resident of Baldwin County, Georgia and is therefore subject to the jurisdiction of the Superior Court of Baldwin County, Georgia.

3.

The Petitioner is currently divorced from Respondent, having been divorced from him by order of Baldwin County Superior Court in 1991.

4.

The Respondent has a history of harassment towards the Petitioner, which has recently escalated Recently, Petitioner returned home to find Respondent had entered her home unlawfully and without permission and was in her kitchen preparing a meal. Petitioner asked him to leave the premises immediately. Since the time of the divorce the parties have not socialized and Respondent had no reason to believe that such an intrusion would be acceptable. Respondent continually harasses Petitioner and their minor child to sign papers which would allow the child to become a Canadian citizen. Further, Respondent has a long history of mental illness, namely, manic depression. Respondent refuses to take medication which has been prescribed for this illness.

5.

That as a result of the acts committed by the Respondent, the Petitioner is in fear for her safety and well-being and for that of her child, and reasonably believes there is a substantial likelihood of immediate danger unless the Respondent is restrained and enjoined as requested herein.

6.

Petitioner shows that due to the likelihood of immediate danger, the Temporary Protective Order should be issued before service of this action is made upon Respondent

7.

Petitioner further requests that Respondent be enjoined from coming around Petitioner or onto her home premises at 118 Heathwood Drive, Macon, Georgia or place of employment pending further order from this Court.

WHEREFORE, Petitioner prays:

a) That the Court issue a Temporary and Permanent Protective Order restraining and enjoining the Respondent from harming or abusing her or her son in any manner; and,

b) That Respondent be ordered to pay attorney's fees and court costs; and,

c) That a hearing be set within ten days of the filing of this Petition for a Temporary and Permanent Protective Order directing Petitioner and Respondent to appear before this Court and show cause, if any they can, why the demands of the Petitioner should not be granted; and,

d) That the Sheriff of Baldwin County be directed to serve a copy of this Petition and the Temporary Protective Order, if granted, upon the Respondent; and that the Sheriff be instructed to enforce said Order and,

e) That Petitioner have such other and further relief as the Court may deem just, proper, and equitable.

Respectfully Submitted,

_____ s/n

Lynn Finney Haywood
Attorney for Petitioner
Georgia Bar # 667217

544 Mulberry Street, Suite 305
Macon Georgia 31201
(912) 738-9446

IN THE SUPERIOR COURT OF BALDWIN COUNTY
STATE OF GEORGIA

MARLENE DENISE ANDREWS, :
Plaintiff, :
:
vs. : Civil Action No_____
:
JAMES L. ANDREWS, :
Defendant. :

VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, Marlene Denise Andrews, who, being duly sworn, does state or oath that she is the Petitioner named in the foregoing Petition and that the facts stated therein are true and correct.

Marlene Denise Andrews
MARLENE DENISE ANDREWS
Petitioner

Sworn to and subscribed before me
this 12 day of September 19 94.

Notary Public, Bibb County, Georgia
My Commission Expires:

IN THE SUPERIOR COURT OF BALDWIN COUNTY
STATE OF GEORGIA

MARLENE DENISE ANDREWS,	:	
Plaintiff,	:	
vs.	:	Civil Action No.
	:	94CV31279B
JAMES L. ANDREWS,	:	
Defendant.	:	

ORDER

The above and foregoing verified Petition having been read and considered and after heareing sworn testimony by the Plaintiff and the Plaintiff having prayed that a Temporary and Permanent Protective Order issue without notice to the Defendant and specific facts have been alleged that the Defendant has committed acts of violence and caused bodily harm to the Plaintiff, and it appearing to the Court that probable cause exists to believe that further harm and injury will be suffered by the Plaintiff without the issuance of this Protective Order, it is hereby ordered and adjudged:

1.

That the Defendant is hereby enjoined and restrained from doing, or attempting to do or threatening to do any act of harm to the Plaintiff or her son.

2.

That the Plaintiff and Defendant named herein show cause before Presiding Judge, on the 23 day of September, 1994, at 9:00 o'clock A. M. in the Superior Court of Baldwin County, if they can, why the demands of the Plaintiff should nor should not be granted until further

APPENDIX A

order of this court.

3.

The foregoing order as to temporary relief shall remain in full force and effect until further order of the Court, or until the expiration of six months from the date of this Order, whichever shall first occur.

SO ORDERED, this 14th day of September, 1994.

Judge, Superior Court Baldwin County, Georgia

APPENDIX A

Court of Appeals of tkhe State of Georgia

Atlanta, September 26, 1994

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

Motion Docket No. 189. JAMES L. ANDREWS V. STATE OF GEORGIA.

James L. Andrews' complaint against the order of the Superior Court of Baldwin County is dismissed. Whether it is intended to be an appeal or an emergency motion under Rule 50 (c), it is moot because hearing is set for this day in the superior court.

Therefore, the complaint is dismissed.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta
Sep 26 1994

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William L. Martin

APPENDIX B

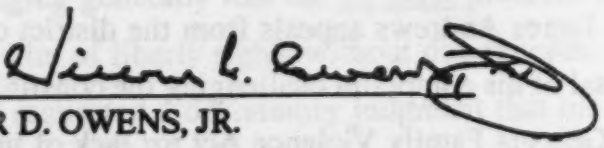
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

JAMES ANDREWS,	)	
Plaintiff,	)	
	)	
vs.	):	**C.A. 94A79-3-MAC (WDO)**
	)	
STATE OF GEORGIA,	)	
Defendant.	)	

ORDER

United States District Courts are courts of limited jurisdiction. The Constitution of the United States and laws passed by Congress define this court's limited jurisdiction. The Constitution and laws passed by Congress do not encompass the matters complained of in the subject civil complaint filed by plaintiff James Andrews. That means this court does not have the authority to decide the matters set forth in Mr. Andrews' complaint. Lacking authority to entertain Mr. Andrews' complaint, this court must DISMISS his complaint for want of, or lack of, jurisdiction.

So ORDERED, this 21st day of November, 1994.



WILBUR D. OWENS, JR.

UNITED STATES DISTRICT JUDGE

WDOjr:lab

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-9411
Non-Argument Calendar

D.C. Docket No. 94-CV-479-MAC-(WDO)

JAMES ANDREWS,

Plaintiff-Appellant,

versus

STATE OF GEORGIA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

(August 8, 1995)

Before BIRCH, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

James Andrews appeals from the district court's dismissal of his complaint challenging the constitutionality of the Georgia Family Violence Act for lack of jurisdiction. Because we find Andrews' claim barred under the Eleventh Amendment, we AFFIRM.

APPENDIX D

James Andrews' ex-wife filed a petition pursuant to the Georgia Family Violence Act, Ga. Code Ann. §19-13-1 et seq., requesting a temporary protective order barring Andrews from harassing her and their minor son. Georgia Superior Court entered an ex parte restraining order against Andrews and scheduled a hearing within ten days to show cause why the order should or should not be extended. Andrews immediately appealed to the Georgia Court of Appeals, claiming that the ex parte restraining order violated his constitutional right to due process and equal protection. The Georgia Court of Appeals dismissed this complaint as moot because of the hearing scheduled in superior court. There is no indication in this record as to whether Andrews attended the evidentiary hearing, or whether the protective order remained in force.

Andrews then filed a complaint in federal district court alleging generally that the ex parte protective order deprived him of liberty rights without due process. Andrews requested a declaratory judgment that his Fourteenth Amendment rights were violated and that the Georgia Family Violence Act was unconstitutional, as well as unspecified punitive damages. The district court sua sponte

dismissed Andrews' complaint for lack of subject matter jurisdiction.

We find that Andrews' suit is precluded by the 11th Amendment. *Robinson v. Georaia Dep't of Transportation*, 966 F.2d 637, 638 (11th Cir.), cert. denied 113 S.Ct. 660 (1992). Unless a state has waived its Eleventh Amendment immunity, or Congress has abrogated it, a state cannot be sued directly in its own name. *Kentucky v. Graham*, 473 U.S. 159, 167, 105 S.Ct. 3099, 3106, 87 L.Ed.2d 114 (1985). Any such waiver or abrogation must be explicit. *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 238, 105 S.Ct. 3142, 3145, 87 L.Ed.2d 171 (1985). Georgia's constitution expressly preserves the state's immunity and the Georgia Family Violence Act does not waive it. Ga. Const. Art. 1, § 2; see *also Robinson*, 966 F.2d at 640; Ga. Code Ann. § 19- 13-1, et seq. As there is no waiver or abrogation of immunity in the instant case, Andrews' suit is barred under the Eleventh Amendment.

AFFIRMED.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-9411

JAMES ANDREWS, **Plaintiff-Appellant,**

versus

SATE OF GEORGIA, **Defendant-Appellee.**

On Appeal from the United States District Court for the Middle District of Georgia

---

BEFORE: BIRCH, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant, James Andrews, is denied

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 94-9411

JAMES ANDREWS,
Plaintiff-Appellant,

versus

STATE OF GEORGIA,
Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Georgia

---

BEFORE: BIRCH, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant, James Andrews, is denied

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

ORD-41

APPENDIX E

Constitution of the United States, Amendment XIV, Section 1. (Citizenship Rights not to be Abridged by States).

All persons born or naturalized in the United States and subjects to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the Privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

JANUARY 1996
NO. _____

JAMES L. ANDREWS, PETITIONER

V.

STATE OF GEORGIA, RESPONDENT

PROOF OF SERVICE

I, J. L. Andrews, do swear or declare that on this date, January 22, 1996, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Thomas K. Bond
Assistant Attorney General
Atlanta, GA 30334-1300

James L Andrews Pro Se
Affiant

Subscribed and Sworn to Before Me this
22nd day of January, 1996.

Carolyn A. Turner
Notary Public in and for
said County and State

My commission expires 7/6/96